

IN THE SENATE OF THE UNITED STATES.

MAY 12, 1896.—Ordered to be printed.

Mr. STEWART, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 2721.]

The Committee on Claims, to whom was referred the bill (S. 2721) for relief of owners or legal representatives of canal boats *Swan* and *Lewis and Butler*, having considered the same, report as follows:

Lewis Rothermel, of Union County, Pa., was the owner of a canal boat called the *Lewis and Butler*, which was hired to the United States War Department about the 1st day of May, 1862, under a written contract. The quartermaster at Baltimore, acting for the War Department, agreed to pay \$15 per day for the use of the boat while she remained in the service of the United States, and to deliver her up in Baltimore in as good order as when received, usual wear and tear excepted. The boat remained in the service of the Government until August 29, 1862, on which day, while loaded with army supplies and in tow of a United States tugboat, she was cut adrift in a storm and abandoned, becoming a total loss. The boat was valued at \$3,500.

The owner applied for indemnity under the provisions of his charter and the act of March 3, 1849. The Quartermaster-General acknowledged the liability of the Government and recommended payment, but the accounting officers of the Government held that the Government was not liable under the contract, and refused the indemnity given by the statute of March 3, 1849 (sec. 3483 of the Revised Statutes), which reads as follows:

SEC. 3483. Every person who sustains damage by the capture or destruction by an enemy, or by the abandonment or destruction by the order of the commanding general, the commanding officer, or quartermaster, of any horse, mule, ox, wagon, cart, sleigh, harness, steamboat or other vessel, railroad engine, or railroad car, while such property is in the military service, either by impressment or contract; or who sustains damage by the death or abandonment and loss of any horse, mule, or ox, while in the service, in consequence of the failure on the part of the United States to furnish the same with sufficient forage, or whose horse, mule, ox, wagon, cart, boat, sleigh, harness, vessel, railroad engine, or railroad car is lost or destroyed by unavoidable accident while such property is in the service, shall be allowed and paid the value thereof at the time when such property was taken into the service, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner: *Provided*, It appears that such loss, capture, abandonment, destruction, or death was without any fault or negligence on the part of the owner of the property, and while the property was actually employed in the service of the United States.

The accounting officers have reversed this decision in all similar cases, but these claimants have not been able to obtain a rehearing for technical reasons.

The claim of Stephen H. Myers, owner of the canal boat *Swan*, is of the same character as that of Rothermel, his boat having been lost at the same time and under the same circumstances. It was presented to the accounting officers in due time, but not decided until January, 1869, more than six years after the loss had occurred.

The claimants petitioned Congress for relief, and the House of Representatives referred their claims to the Court of Claims under the Bowman Act, but that court decided that it had no jurisdiction under that act because the claims grew out of the damage or destruction of property by the Army, and had not been presented to the court within six years after they first accrued.

The purpose of the present bill is to give to the Court of Claims jurisdiction to award such judgment as the claimants may be entitled to under their contract, and the law applicable to the case when the loss occurred.

Your committee are of opinion that the claimants ought to have a hearing in the Court of Claims, and report back the bill with the recommendation that it do pass.

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